

it appearing that the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) requires a second or successive Section 2255 motion to be certified by the Third Circuit Court of Appeals,¹ and

it appearing that Petitioner’s motion constitutes a second or successive Section 2255 motion,² and

it appearing that the issues raised in Petitioner’s motion have not been certified by the Third Circuit in accordance with the AEDPA.

¹The AEDPA requires the Third Circuit to certify that a second and successive Section 2255 Motion contains: “(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court.” 28 U.S.C. § 2255; *see also* 28 U.S.C. 2244(b)(3) (setting forth the protocols for successive habeas corpus applications in the court of appeals).

²The fact that Petitioner filed this motion under Fed. R. Civ. P. 60(b) does not allow him to circumvent the AEDPA’s requirements. When a petitioner, having already filed an unsuccessful habeas corpus challenge to his conviction and sentence, files a Rule 60(b) motion attacking that conviction - rather than attacking the manner in which the earlier habeas judgment was procured - the Rule 60(b) motion will be treated as a second and successive petition under the AEDPA. *Pridgen v. Shannon*, 380 F.3d 721, 727 (3d Cir. 2004) (holding that when a Rule 60(b) motion seeks to “collaterally attack the petitioner’s underlying conviction, the motion should be treated as a successive habeas petition”); *United States v. Tam*, Civ. No. 03-0141, 2005 U.S. Dist. LEXIS 3154, *4 (E.D. Pa. Mar. 1, 2005) (denying a Rule 60(b) motion raising *Booker* issues because movant failed to satisfy the AEDPA requirements regarding certification of a second Section 2255 motion). Petitioner’s 60(b) motion argues that the Sentencing Guidelines, under which his sentence was decided, are invalid under the reasoning of *Blakely v. Washington*, 542 U.S. ___, 124 S. Ct. 2531 (2004). Accordingly, Petitioner’s motion attacks the validity of his conviction and must be considered a second and successive Section 2255 petition under the AEDPA. *Pridgen*, 380 F.3d at 727; *Tam*, 2005 U.S. Dist. LEXIS 3154, *4; *see also In re Olepade*, 403 F.3d 159 (3d Cir. Apr. 11, 2005) (denying petitioner’s request to file a second or successive habeas corpus petition because *United States v. Booker* - the Supreme Court’s most recent Guideline’s decision - is not retroactively applicable to cases on collateral review).

It is on this 28th day of August 2006,

ORDERED that Plaintiff *pro se*'s Motion to Reopen his § 2255 Motion is **DENIED**.

/s/ Faith S. Hochberg
Hon. Faith S. Hochberg